

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

Case No. VN-2008-1078

JULIE KAREN MELCHER
41179 Myrtle Street
Palmdale, CA 93551

OAH No. 2010080666

Applicant for Vocational Nurse License


Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the final Decision in the above-entitled matter.

This Decision shall become effective on August 18, 2011.

IT IS SO ORDERED this 19th day of July, 2011.



John P. Vertido, L.V.N.
President

**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues
Against:

JULIE KAREN MELCHER

Vocational Nurse License Applicant,

Respondent.

Case No. VN-2008-1078

OAH No. 2010080666

PROPOSED DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, on January 4, 2011, in Los Angeles.

Rene Judkeiwicz, Deputy Attorney General, represented Complainant.

Julie Karen Melcher (Respondent) represented herself.

Evidence was received by stipulation, documents, and testimony, and argument was heard. The matter was submitted and the record was closed on January 4, 2011.

FACTUAL FINDINGS

1. On July 9, 2010, Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) filed the Statement of Issues in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, State of California.

Respondent's Application

2. On September 22, 2008, the Board received an Application for Vocational Nurse Licensure (Application) from Respondent. Respondent signed the Application on August 23, 2008, and thereby certified under penalty of perjury that the information contained in the Application was true and correct.

3. On October 28, 2009, the Board denied the Application on the grounds that Respondent has been convicted of crimes substantially related to the qualifications,

functions, and duties of a licensed vocational nurse. On November 30, 2009, the Board received Respondent's request for hearing to appeal the denial of the Application.

Respondent's Convictions

4. Between 1989 and 2005, Respondent had eight criminal convictions, as described below.

5. On May 2, 1989, in Los Angeles County Municipal Court case number 88D09771, Respondent was convicted on her plea of guilty of one count of violating Vehicle Code section 23152, subdivision (b) (driving while having blood-alcohol .08 percent or higher), a misdemeanor. As part of her 36-month summary probation for this conviction, Respondent completed an alcohol treatment/counseling program.

6. On July 29, 1999, in Los Angeles County Municipal Court case number BA167423, Respondent was convicted on her plea of guilty of one count of violating Welfare and Institutions Code section 10980, subdivision (c)(2) (welfare fraud), a misdemeanor. As part of her 36-month summary probation for this conviction, Respondent paid restitution to the County of Los Angeles in the amount of \$3,734. According to Respondent, this crime occurred at the time she and her husband had separated and she was taking care of a young daughter. She was working as a licensed hairdresser but not making enough money. Respondent received public assistance. Respondent was not familiar with the income reporting requirements. Per the court's order, she paid back the money that was not reported.

7. On December 11, 2002, in Los Angeles County Superior Court case number 2AT05925, Respondent was convicted on her plea of nolo contendere of one count of violating Vehicle Code section 23152, subdivision (b) (driving while having blood-alcohol .08 percent or higher), a misdemeanor. The court records state that Respondent's "blood alcohol content test showed BAC of .20 percent." As part of her 36-month probation for this conviction, Respondent completed a six-month, first-offender alcohol treatment program.

8. On January 24, 2003, in Los Angeles County Superior Court case number 3PN00552, Respondent was convicted on her plea of nolo contendere of one count of violating Penal Code section 484, subdivision (a) (theft), a misdemeanor. Respondent was placed on summary probation for 24 months.

9. On July 30, 2003, in Los Angeles County Superior Court case number 3AT03309, Respondent was convicted on her plea of nolo contendere of one count of violating Penal Code section 653m, subdivision (a) (annoying phone calls: obscene/threatening), a misdemeanor. As part of her 36 month summary probation for this conviction, Respondent was ordered to stay away from and not annoy or harass the victim of her crime, Kenneth Melcher, who was Respondent's husband at the time. The court also issued a protective order for Mr. Melcher.

10. On September 4, 2003, in Los Angeles County Superior Court case number 3AT04019, Respondent was convicted on her plea of nolo contendere of one count of violating Vehicle Code section 12500, subdivision (a) (driving a vehicle without a valid license), a misdemeanor. Respondent was placed on summary probation for 36 months.

11. On February 2, 2005, in Los Angeles County Superior Court case number 4AT03647, Respondent was convicted on her plea of guilty of one count of violating Vehicle Code section 14601.1, subdivision (a) (driving when privilege suspended), a misdemeanor. Respondent was denied probation and ordered to serve 120 days in county jail and pay \$175 in fines and fees.

12. On July 26, 2005, in Los Angeles County Superior Court case number 5AT00706, Respondent was convicted on her plea of nolo contendere of one count of violating Penal Code section 236 (false imprisonment), a misdemeanor. Respondent had entered her nolo contendere plea on February 2, 2005, but was not sentenced until July 26, 2005. Pursuant to the court's order on February 2, 2005, other charges filed against Respondent were dismissed upon her completion of an alcohol treatment program at the Acton Rehabilitation Center. Proof of Respondent's completion of the Acton program was filed with the court on July 26, 2005.

13. The victim of Respondent's false imprisonment crime was Kenneth Melcher, who was her husband at the time of the crime. Mr. Melcher and Respondent have since divorced. Mr. Melcher's testimony established that the facts and circumstances underlying the conviction were: Respondent parked her car behind Mr. Melcher's car and he could not get out. Respondent was in an "alcoholic state" (Mr. Melcher's words). Mr. Melcher called the police because he was "tired of her actions."

Rehabilitation

14. Respondent is 48 years old. She lives with her 19-year-old daughter. Respondent is presently employed at an art gallery in Antelope Valley, where she has worked since July or August 2010. Before that, she did seasonal work at Bed, Bath & Beyond. In 2008, she was completing her vocational/practical nursing program.

15. Respondent attended the vocational/practical nursing program at Career Care Institute in Lancaster, California. She started the program on April 30, 2007, and graduated on August 23, 2008. She went to nursing school because she loves to care for people.

16. Respondent is a recovering alcoholic. Her sobriety date is February 1, 2005. She attends Alcoholics Anonymous (AA) meetings two to three times per week. Respondent drank socially for a long time. She started abusing alcohol as a way to deal with the problems with her marriage and her unhappiness. She admitted that she would "run to drink for any problem." She realized she had a problem with alcohol after her DUI arrest in 2002. She had driven a car into a ditch. Respondent started attending AA meetings, but more for her family than for herself. She went to the AA meetings for a few months, but then started

drinking again, especially in 2003, which was a "bad year" for her. Respondent feels that when her husband, Kenneth Melcher, called the police on her in 2005, it was the "best thing" and "made me wake up." At that point, Respondent knew she was ready to stop abusing alcohol and get help.

17. Respondent attended the alcohol treatment program at Acton Rehabilitation Center for 90 days. She admitted herself to the program on April 18, 2005. She completed the program and was discharged on July 17, 2005. While in the program, Respondent participated in, among other things, group and individual counseling, 12-step recovery meetings, chemical dependency education, relapse prevention, and recovery planning groups.

18. Respondent is determined to maintain her sobriety. She has family and friends who support her in maintaining her sobriety. She does not associate with any of the friends she used to drink with. She has done the 12-step program four times. She is currently on the program again at step 2. Respondent considers herself a "sober alcoholic." She knows she will always be an alcoholic. She does not drink alcohol. For problems now and in the future, she does not turn to drink but knows she has other coping mechanisms to deal with the problems, such as communication with others and expressing her feelings to others.

19. Kenneth Melcher testified at the hearing for Respondent. Mr. Melcher was the victim in the incident that led to Respondent's conviction for false imprisonment. Mr. Melcher feels that Respondent is not the person she used to be, and she is now "clean and sober." In a letter dated July 14, 2010, Mr. Melcher wrote that he was the victim and filed charges against Respondent, he was not under any obligation to write the letter, and he was honored for the opportunity to help Respondent. Respondent was the primary caregiver for Mr. Melcher's father during the last two months of his life. He found that Respondent treated his father "with dignity and care as a skilled nurse." Mr. Melcher feels that "[s]eeing [Respondent] overcome her chemical dependency (Alcohol) has been the greatest thing in both our lives. . . . [Respondent] has sought counseling & received help for her condition and remains to this day a functioning sober member of our society. She attends 12 step meetings on a regular basis and has accomplished to raise our daughter in and around a sober environment for the past six years. She has many friends around her that love and support her as well as a loving family that thinks the world of her. [¶] She and I have separated due to circumstance; I have tasks to complete for my immediate family members, related to my fathers passing. She is focused on our daughters education and getting her career started as a nurse."

20. Sherrie Hovanec testified at the hearing. Ms. Hovanec has been Respondent's AA sponsor for the past three years. Ms. Hovanec has known Respondent for six years. She sees Respondent once a week at AA meetings, and they also talk frequently. Ms. Hovanec has witnessed Respondent's changes in her life. According to Ms. Hovanec, Respondent acknowledges her part in her past mistakes, which are alcohol related. Respondent has taken responsibility for those mistakes and knows where she went wrong. Ms. Hovanec feels that Respondent has a genuine desire to be the best she can be. Ms. Hovanec has found

Respondent to be a dedicated member of AA. Respondent regularly attends meetings and also helps newcomers to AA.

21. Respondent offered several character reference letters, which generally attest to her good character, her strong desire to help others, and her great efforts to turn her life around and become a productive member of society.

LEGAL CONCLUSIONS

1. An applicant for a vocational nurse's license must comply with the requirements of Business and Professions Code section 2866, including the requirement of subdivision (d) that the applicant "[n]ot be subject to denial of licensure under Section 480."

2. Under Business and Professions Code section 480, subdivision (a), a board may deny a license to an applicant who has one of the following:

(1) Been convicted of a crime that is substantially related to the qualifications, functions, or duties of the licensed profession.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

3. Pursuant to Business and Professions Code section 2878, the Board may suspend or revoke a vocational nurse's license for any of the following:

(a) Unprofessional conduct.

[¶] ... [¶]

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse.

[¶] ... [¶]

(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee.

4. Under Business and Professions Code section 2878.5, it is unprofessional conduct for a licensed vocational nurse to do any of the following:

[¶] . . . [¶]

(b) Use any . . . alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving . . . the consumption, or self-administration of any of the substances described in subdivisions (a) or (b) of this section.

5. Cause exists to deny Respondent's application for a vocational nurse license, pursuant to Business and Professions Code sections 2866, subdivision (d), 480, subdivision (a)(1), and 2878, subdivision (f), in that Respondent was convicted of crimes which are substantially related to the qualifications, functions and duties of a licensed vocational nurse, based on the matters in Factual Findings 4-13.

6. Respondent's crimes are substantially related to the qualifications, functions, and duties of a licensed vocational nurse because the crimes, to a substantial degree, evidence a present or potential unfitness of Respondent to perform the duties of a licensed vocational nurse in a manner consistent with public health, safety, or welfare. (Cal. Code Regs., tit. 16, § 2521.)

7. Cause exists to deny Respondent's application for a vocational nurse license, pursuant to Business and Professions Code sections 2866, subdivision (d), 480, subdivision (a)(2) & (3), and 2878, subdivision (j), in that Respondent committed theft and welfare fraud, both of which are acts involving dishonesty, fraud, or deceit with the intent to substantially benefit herself, and acts involving dishonesty related to the duties of a licensed vocational nurse, based on the matters in Factual Findings 6 and 8.

8. Cause exists to deny Respondent's application for a vocational nurse license, pursuant to Business and Professions Code sections 2866, subdivision (d), 480, subdivision (a)(3), 2878, subdivision (a), and 2878.5, subdivision (c), in that Respondent was convicted of crimes involving the consumption of alcoholic beverages, based on the matters in Factual Findings 5 and 7.

9. Cause exists to deny Respondent's application for a vocational nurse license, pursuant to Business and Professions Code sections 2866, subdivision (d), 480, subdivision (a)(3), 2878, subdivision (a), and 2878.5, subdivision (b), for unprofessional conduct, in that Respondent used alcoholic beverages to an extent and in a manner dangerous or injurious to herself and others by driving a vehicle with a blood-alcohol level of .08 percent or higher, based on the matters in Factual Findings 5 and 7.

10. Causes exists to deny Respondent's application for a vocational nurse license, pursuant to Business and Professions Code sections 480, subdivisions (a)(3)(A) and (B), and 2866, in that she has committed acts which if done by a licensee of the Board would be grounds for suspension or revocation of a license, based on the matters in Factual Findings 4-13.

11. When considering the denial of a license under Business and Professions Code section 480, the Board, in evaluating the rehabilitation of an individual and his or her present eligibility for a license, will consider the following criteria:

- (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.
- (2) Actual or potential harm to the public.
- (3) Actual or potential harm to any patient.
- (4) Overall disciplinary record.
- (5) Overall criminal actions taken by any federal, state or local agency or court.
- (6) Prior warnings on record or prior remediation.
- (7) Number and/or variety of current violations.
- (8) Mitigation evidence.
- (9) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- (10) Time passed since the act(s) or offense(s) occurred.
- (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4.
- (12) Cooperation with the Board and other law enforcement or regulatory agencies.
- (13) Other rehabilitation evidence.

(Cal. Code Regs., tit. 16, § 2522.)

12. The primary concern with Respondent is her history of alcohol abuse. However, she provided sufficient evidence of rehabilitation, through her testimony, the testimony of her witnesses, and other documentary evidence, to justify granting her a probationary license. It is clear that Respondent is serious and determined to maintain her sobriety, and she has a network of family and friends to support her in her efforts. A properly conditioned probationary license should serve to adequately protect the public.

ORDER

The application of Respondent Julie Karen Melcher, for a vocational nurse license, is hereby granted and a license shall be issued to Respondent upon completion of all licensing requirements. Said license shall immediately be revoked, the order of revocation stayed, and

Respondent placed on probation for a period of three years under the following terms and conditions:

1. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within five (5) days of occurrence.

To ensure compliance with this condition, respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprints were previously submitted by Respondent to the Board.

Respondent shall also submit to the Board a recent 2" x 2" photograph of himself/herself within thirty (30) days of the effective date of the decision.

If Respondent is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions.

2. COMPLIANCE WITH PROBATION PROGRAM

Respondent shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of respondent's compliance with the Probation Program.

Upon successful completion of probation, Respondent's license will be fully restored.

3. SUBMIT WRITTEN REPORTS

Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports, declarations and verification of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Program.

Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, Respondent shall provide a list of all states and territories where he/she has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Respondent shall provide information regarding the status of each license and any change in license status during the period of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Respondent shall provide a copy of the Board's decision to the regulatory agency in every state and territory in which he/she has applied for or holds a vocational/practical nurse, psychiatric technician and/or registered nurse license.

4. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S)

Respondent shall notify the Board, in writing, within five (5) days of any change in address or telephone number(s).

Respondent's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

5. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE

Respondent shall notify the Board, in writing, within five (5) days, if he/she leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If Respondent resides or practices outside of California, the period of probation shall be automatically extended for the same time period he resides or practices outside of California. Respondent shall provide written notice to the Board within five (5) days of any change of residency or practice.

Respondent shall notify the Board, in writing, within five (5) days, upon his/her return to California.

6. MEETINGS WITH BOARD REPRESENTATIVE(S)

Respondent shall appear in person at meetings as directed by the Board or its designated representatives.

7. NOTIFICATION TO EMPLOYER(S)

When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify his/her employer of the probationary status of Respondent's license. This notification to Respondent's current health care employer shall occur no later than the effective date of the Decision. Respondent shall notify any prospective health care employer of his/her probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit to the Board all performance evaluations and any other employment related reports as required by the Board. Respondent shall notify the Board, in writing, of any difficulty in securing employer reports within five (5) days of such an event.

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, if he/she is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. EMPLOYMENT REQUIREMENTS AND LIMITATIONS

Respondent shall work in his/her licensed capacity in the state of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

9. SUPERVISION REQUIREMENTS

Before commencing or continuing employment in any health care profession, Respondent shall obtain approval from the Board of the supervision provided to Respondent while employed.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Board.

10. COMPLETION OF EDUCATIONAL COURSE(S)

Respondent, at his or her own expense, shall enroll and successfully complete a course(s) substantially related to the violation(s) no later than the end of the first year of probation.

The coursework shall be in addition to that required for license renewal. The Board shall notify Respondent of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of assigned coursework,

Respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, Respondent shall submit "original" completion certificates to the Board within thirty (30) days of course completion.

11. MAINTENANCE OF VALID LICENSE

Respondent shall, at all times, maintain an active current license with the Board including any period of suspension.

If an initial license must be issued (Statement of Issues) or a license is reinstated, probation shall not commence until a license is issued by the Board. Respondent must complete the licensure process within two (2) years from the effective date of the Board's decision.

Should Respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, Respondent's license shall be subject to any and all conditions of this probation not previously satisfied.

12. LICENSE SURRENDER

During probation, if Respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his/her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A licensee who surrenders his/her license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision for the surrender:

- Three (3) years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or
- One (1) year for a license surrendered for a mental or physical illness.

13. VIOLATION OF PROBATION

If Respondent violates the conditions of his/her probation, the Board, after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of Respondent's license. If during probation, an accusation or petition to revoke probation has been filed against

Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

14. CHEMICAL DEPENDENCY SUPPORT & RECOVERY GROUPS

Within five (5) days of the effective date of the Decision, Respondent shall begin attendance at a chemical dependency support group (e.g., Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Verified documentation of attendance shall be submitted by Respondent with each written report as required by the Board. Respondent shall continue attendance in such a group for the duration of probation.

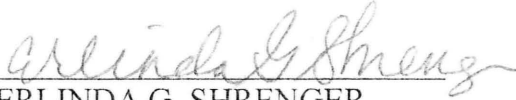
15. ABSTAIN FROM USE OF ALCOHOL

Respondent shall completely abstain from the use of alcoholic beverages and products containing alcohol.

16. SUBMIT BIOLOGICAL FLUID SAMPLES

Respondent shall immediately submit to biological fluid testing, at Respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and the Respondent's current employer.

DATED: May 16, 2011


ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR.
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 RENE JUDKIEWICZ
Deputy Attorney General
4 State Bar No. 141773
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2537
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
Against:

12 **JULIE KAREN MELCHER**
13 **41179 Myrtle Street**
14 **Palmdale, CA 93551**

15 **Vocational Nurse License Applicant**

16 Respondent.

Case No. VN-2008-1078

STATEMENT OF ISSUES

17
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Statement of Issues
21 solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and
22 Psychiatric Technicians, Department of Consumer Affairs.

23 2. On or about September 22, 2008, the Board of Vocational Nursing and Psychiatric
24 Technicians (Board) received an application for a Vocational Nurse License Applicant from Julie
25 Karen Melcher (Respondent). On or about August 23, 2008, Respondent certified under penalty
26 of perjury to the truthfulness of all statements, answers, and representations in the application.
27 The Board denied the application on October 28, 2009.

28 ///

1 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
2 discipline a licensee for conviction of a crime that is independent of the authority granted under
3 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
4 of the business or profession for which the licensee’s license was issued.

5 “(c) A conviction within the meaning of this section means a plea . . . of guilty or a
6 conviction following a plea of nolo contendere. Any action that a board is permitted to take
7 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
8 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
9 made suspending the imposition of sentence, irrespective of a subsequent order under the
10 provisions of Section 1203.4 of the Penal Code.”

11 6. Section 2866 provides that a vocational nurse license applicant shall comply with
12 multiple requirements including not being subject to license denial under section 480 of the Code.

13 7. Section 2875 provides that the Board may discipline the holder of a vocational nurse
14 license for any reason provided in Article 3 (commencing with section 2875) of the Vocational
15 Nursing Practice Act (Bus. & Prof. Code, § 2840 et seq.).

16 8. Section 2878 states, in pertinent part:

17 “The board may suspend or revoke a license issued under this chapter [the Vocational
18 Nursing Practice Act] for any of the following:

19 “(a) Unprofessional conduct

20

21 “(f) Conviction of a crime substantially related to the qualifications, functions, and duties
22 of a licensed vocational nurse, in which event the record of the conviction shall be conclusive
23 evidence of the conviction.

24

25 “(j) The commission of any act involving dishonesty, when that action is related to the
26 duties and functions of the licensee.”

27 ///

28 ///

9. Section 2878.5 states, in pertinent part:

“In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

• • • •

“(b) Use . . . alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

“(c) Be convicted of a criminal offense involving . . . consumption . . . of any of the substances described in subdivision[] . . . (b) of this section, in which event the record of the conviction is conclusive evidence thereof.”

REGULATORY PROVISION

10. California Code of Regulations, title 16, section 2521, states, in pertinent part:

“For the purposes of denial . . . of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare.”

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction of Crimes)

11. Respondent's application is subject to denial under sections 480, subdivision (a)(1), 490, 2866, and 2878, subdivisions (a) and (f), in that Respondent was convicted of crimes, as follows:

a. On or about July 26, 2005, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Penal Code section 236 [false imprisonment], in the criminal proceeding entitled *People v. Melcher* (Super. Ct. Los Angeles County, 2005, No. SAT00706). The court placed Respondent on probation for a period of 36 months, and ordered

1 her to pay a fine. The circumstances surrounding the conviction are that on or about January 31,
2 2005, Respondent falsely imprisoned another person.

3 b. On or about February 2, 2005, after pleading guilty, Respondent was convicted of one
4 misdemeanor count of violating Vehicle Code section 14601.1, subdivision (a) [driving when
5 privilege suspended], in the criminal proceeding entitled *People v. Melcher* (Super. Ct. Los
6 Angeles County, 2004, No. 4AT03647). The court sentenced Respondent to 120 days in Los
7 Angeles County Jail and ordered her to pay a fine. The circumstances surrounding the conviction
8 are that on or about May 11, 2004, Respondent was driving a motor vehicle when her driving
9 privilege was suspended.

10 c. On or about September 4, 2003, after pleading nolo contendere, Respondent was
11 convicted of one misdemeanor count of violating Vehicle Code section 12500, subdivision (a)
12 [driving a vehicle without a valid license], in the criminal proceeding entitled *People v. Melcher*
13 (Super. Ct. Los Angeles County, 2003, No. 3AT04019). The court sentenced Respondent to 5
14 days in Los Angeles County Jail, placed her on probation for a period of 36 months, and ordered
15 her to pay a fine. The circumstances surrounding the conviction are that on or about July 22,
16 2003, Respondent was driving a vehicle without a valid driver's license.

17 d. On or about July 30, 2003, after pleading nolo contendere, Respondent was convicted
18 of one misdemeanor count of violating Penal Code section 653m, subdivision (a) [annoying
19 phone calls: obscene/threatening], in the criminal proceeding entitled *People v. Melcher* (Super.
20 Ct. Los Angeles County, 2003, No. 3AT03309). The court sentenced Respondent to 20 days' jail,
21 placed her on 36 months' probation, and ordered her to pay a fine. The circumstances
22 surrounding the conviction are that on or about May 13, 2003, Respondent was making annoying
23 telephone calls to her ex-husband.

24 e. On or about January 24, 2003, after pleading nolo contendere, Respondent was
25 convicted of one misdemeanor count of violating Penal Code section 484, subdivision (a) [theft],
26 in the criminal proceeding entitled *People v. Melcher* (Super. Ct. Los Angeles County, 2003, No.
27 3PN00552). The court sentenced Respondent to 3 days' jail, placed her on 24 months' probation,
28 and ordered her to pay a fine. The circumstances surrounding the conviction are that on or about

1 January 22, 2003, Respondent stole a clothing item from a store.

2 f. On or about December 11, 2002, after pleading nolo contendere, Respondent was
3 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
4 [driving while having a 0.08% or higher blood alcohol], in the criminal proceeding entitled
5 *People v. Melcher* (Super. Ct. Los Angeles County, 2005, No. 2AT05925). The court sentenced
6 Respondent to 13 days' jail, placed her on 36 months' probation, and ordered her to pay a fine.
7 The circumstances surrounding the conviction are that on or about November 01, 2002,
8 Respondent operated a vehicle while under the influence of alcohol.

9 g. On or about July 29, 1999, after pleading guilty, Respondent was convicted of one
10 misdemeanor count of violating Welfare and Institutions Code section 10980, subdivision (c)(2)
11 [welfare fraud], in the criminal proceeding entitled *People v. Melcher* (Mun. Ct. Los Angeles
12 County, 1998, No. BA167423). The court placed Respondent on 36 months' probation, and
13 ordered her to pay a fine. The circumstances surrounding the conviction are that on or about June
14 1, 1994, Respondent did not report income.

15 h. On or about May 2, 1989, after pleading guilty, Respondent was convicted of one
16 misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while
17 having a 0.08% or higher blood alcohol], in the criminal proceeding entitled *People v. Melcher*
18 (Mun. Ct. Los Angeles County, 1988, No. 88D09771). The court placed Respondent on 36
19 months' probation, and ordered her to pay a fine. The circumstances surrounding the conviction
20 are that on or about October 21, 1988, Respondent drove a vehicle while under the influence of
21 alcohol.

22 **SECOND CAUSE FOR DENIAL OF APPLICATION**

23 **(Acts Involving Dishonesty, Fraud or Deceit)**

24 12. Respondent's application is subject to denial under sections 480, subdivision (a)(2),
25 2866, and 2878, subdivision (j), in that Respondent committed dishonest acts, fraud, or deceit
26 with the intent to substantially benefit herself, or substantially injure another. Complainant refers
27 to, and by this reference incorporates, the allegations set forth above in paragraph 11,
28 subparagraphs (e) and (g), as though set forth fully.

1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(Convictions Involving Alcohol Consumption)**

3 13. Respondent's application is subject to denial under section 2878.5, subdivision (c), in
4 that Respondent was convicted of crimes involving the consumption of alcohol. Complainant
5 refers to, and by this reference incorporates, the allegations set forth above in paragraph 11,
6 subparagraphs (f) and (h), as though set forth fully.

7 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

8 **(Dangerous Use of Alcohol)**

9 14. Respondent's application is subject to denial under section 2878.5, subdivision (b), in
10 that Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to
11 herself, and the public. Respondent drove a vehicle under the influence, with 0.08 percent or
12 more alcohol in her blood. Complainant refers to, and by this reference incorporates, the
13 allegations set forth above in paragraph 11, subparagraphs (f) and (h), as though set forth fully.

14 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

15 **(Acts Warranting Denial of Licensure)**

16 15. Respondent's application is subject to denial under sections 480, subdivisions
17 (a)(3)(A) and (B), and 2866, in that Respondent committed acts which if done by a licentiate
18 would be grounds for suspension or revocation of her license. Complainant refers to, and by this
19 reference incorporates, the allegations set forth above in paragraph 11, subparagraphs (a) through
20 (h), inclusive, as though set forth fully.

21
22 **PRAYER**

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Board issue a decision:

25 1. Denying the application of Respondent Julie Karen Melcher for a Vocational Nurse
26 License; and

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Taking such other and further action as deemed necessary and proper.

DATED: July 9, 2010.



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

LA2010600095
60544237.docx